

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LUCY AMADOR, et. al, on behalf of themselves
and all others similarly situated,

***RULE 56 STATEMENT
OF FACTS***

Plaintiffs

-against-

SUPERINTENDENTS OF THE DEPARTMENT OF
CORRECTIONAL SERVICES (“DOCS”)
ANGINELL ANDREWS, et. al

Defendants

06:10 -cv-06702 (DGL) (JWF)

Pursuant to Local Rules of Civil Procedure 56(a)(1), Defendant ROBERT SMITH, by and through his attorney, George V.C. Muscato, Esq., hereby submits the following Statement of Facts, as to which Defendant SMITH contends there are no genuine issues of fact to be tried:

1. Officer Robert Smith has been an employee of DOCS since 1988 (Smith Deposition, p.14).
2. Officer Smith was transferred to Albion Correctional Facility (ACF) in 1992 (Smith Deposition, p.15).
3. At the time of the alleged incidents, Officer Smith was assigned to C-Block basement (Smith Deposition, p.20).
4. Plaintiff Lucy Amador n/k/a Lucy Tasama (Plaintiff Amador) was sentenced and incarcerated in 1999. Plaintiff Amador was transferred from Valhalla to Bedford Hills. In November of 1999, Plaintiff Amador was transferred from Bedford Hills to ACF (Amador Deposition, p. 21; p.187).
5. In early 2001, Plaintiff Amador attended various classes in C-Block basement, where Officer Smith was stationed (Amador Deposition, p.22).

6. Plaintiff Amador recalls her first interaction with Officer Smith was at the end of 2000, or early 2001 (Amador Deposition, p.195). Plaintiff Amador stated Officer Smith approached her on “a Sunday on a day that [she] went outside to the yard during the break, during the night hours” (Amador Deposition, p.24) and asked if she wanted to have a “relationship” (Amador Deposition, p.25). Officer Smith allegedly “extended his hand and he touched [her] on [her] bottom” at that time (Amador Deposition, p.25).
7. Plaintiff Amador alleges that a second incident occurred on an unspecified day “mid-week” during March or April of 2001, at which time Officer Smith allegedly “kissed [her] for the first time when [she] was going up the stairs” (Amador Deposition, p.26; p.201-02). Officer Smith allegedly touched her breasts at this time (Amador Deposition, p.26).
8. Plaintiff Amador alleges that a third incident occurred on an unspecified day where she “went to take a class, and the class was cancelled on that day so you had to wait longer to get out” (Amador Deposition, p.203). This time, Plaintiff Amador alleges that Officer Smith “used his tongue” to kiss her and “fondled” her (Amador Deposition, p.27; p.203).
9. Plaintiff Amador alleges only one other relevant incident that occurred with Officer Smith on an unspecified “Sunday that [she] went to pick up [her] things, [her] shampoo and other things” in C-Basement (Amador Deposition, p.30; p.212). Officer Marcelo and various other inmates were present at the time of the alleged incident (Amador Deposition, p.32; p.225).

10. On that unspecified Sunday, Plaintiff Amador alleges that Officer Smith unlocked a door to a room in C-Basement, stepped inside, "dropped his pants inside that room, and he held his penis" (Amador Deposition, p.31; p.222). Officer Smith allegedly "called [Plaintiff Amador] and started gesturing with his mouth" (Amador Deposition, p.31; p.221-22).
11. This is the only time that Plaintiff Amador claims Officer Smith exposed his genitals to her (Amador Deposition, p.227).
12. Plaintiff Amador admits that there were no witnesses to any of the alleged incidents described above (Amador Deposition, p.198; p.202; p.223-26).
13. Plaintiff Amador recalls no other incidents or occurrences of sexual comments or conduct by Officer Smith toward her.
14. Officer Smith emphatically denies the allegations, and denies having any type of sexual or intimate relationship with any inmates (Smith Deposition, p.108-09).

Dated: February 14, 2012



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